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SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

Written statement*/ submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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ENG

Violations of Migrant Workers' Rights

1. Everyday, migrant workers cross national borders to better their lives, their family's lives and their communities by trying to earn more money to send back home. While migrant workers are enticed to cross these borders, the countries that entice them are putting these individuals in great peril because of their dangerous border policies. These border policies force migrant workers into desolate and dangerous areas, and many times into the hands of exploitative trafficking operations. If these individuals are lucky enough to survive their journey, there is still no protection from cruel and inhumane treatment within the countries that they enter. Over the years, Human Rights Advocates has submitted numerous reports describing violations of migrant workers' rights, but violence continues unchecked. This statement will focus on violations of the right to life of migrant workers on the territorial borders of nations and the right of migrant workers to be free from "torture or to cruel, inhuman or degrading treatment or punishment."[1]

UNITES STATES

Border Deaths

2. In 1994, the U.S. government released a plan to control the flow of illegal immigration on its southern borders. The plan was broken into four operations with "Operation Gatekeeper," which covered the area south of San Diego, California, resulting in the most deaths. From the inception of the operations to September 18, 2000, more than 1,300 deaths had occurred.[2]

3. Last year alone, the U.S. Border Patrol, which keeps a migrant body count by fiscal year, reported that there were more than 350 deaths.[3] The Mexican Foreign Relations Office, which keeps a migrant body count by calendar year, reported that there were more than 380 deaths.[4]

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[1] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 10, adopted by General Assembly Resolution 451158 of 18 December 1990 (not in force), http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm

[2] The following data on migrant death comes from Claudia Smith, Border Project Director of the California Rural Legal Assistance Foundation, Letter to Allan G. Jury, Director of Policy Resource Planning of the Bureau of Population, Refugees & Migration of the U.S. Department of State, dated September 27, 2000. These figures came from the Mexican Foreign Relations Office, which keeps migrant body count by calendar year.

[3] The following data on migrant death comes from Claudia Smith, Border Project Director of the California Rural Legal Assistance Foundation, Letter to Allan G. Jury, Director of Policy Resource Planning of the Bureau of Population, Refugees & Migration of the U.S. Department of State, dated September 27, 2000. The U.S. figures cover October 1, 1999 to September 13, 2000.

4. While the Immigration and Naturalization ("INS") admits that worksite enforcement is the primary means for controlling immigration,[5] increased resources continue to be focused on the border control rather than worksite enforcement. Thus, while the INS budget increased 179% from 1993-1999,[6] the number of INS worksite investigators increased very little.[7]

5. In 1998, the United States put "Operation Lifesaver" into force to reduce the number of deaths at the border. The U.S. Immigration and Naturalization officials reported that agents have rescued more than 2,000 migrants.[8] "Operation Lifesaver" is not having the intended effect because the U.S. Border Patrol's own reports indicate that there were 231 deaths in FY 1999 and 351 deaths through September 13, 2000. Douglas, Arizona, Mayor Ray Borane stated, "[t]o me, it's like throwing a young child in the swimming pool, exposing him to the danger, and then saying that we have a method for securing that child."[9]

6. In another development, U.S. ranchers have taken vigilante action against migrants who have crossed the U.S. border into their property; in some cases it has been brutal or even deadly. Infamous Arizona rancher, Roger Barnett, told The Irish Times that "he has charged journalists $1,000 to go hunting with him."[10] Larry Vance Jr., chairman of the Cochise County Concerned Citizens, was quoted as saying "[w]here a native population has been diluted by invaders it runs into a bloodbath."[11]

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[4] The following data on migrant death comes from Claudia Smith, Border Project Director of the California Rural Legal Assistance Foundation, Letter to Allan G. Jury, Director of Policy Resource Planning of the Bureau of Population, Refugees & Migration of the U.S. Department of State, dated September 27, 2000. The Mexican figures cover January 1, 2000 to September 18, 2000.

[5] Commissioner Meissner testimony before the U.S. Senate on July 28, 1998.

[6] "INS Deploys $3.8 Billion in FY 98 Resources," INS News Release, March 10, 1998. One must keep in mind that 1993 was a year before this overzealous border campaign was initiated.

[7] Wayne Cornelius, "Appearances and Realities: Controlling Illegal Immigration in the U.S." in Temporary Workers or Future Citizens: Japanese and U.S. Migration Policies, Byron Weiner and Tadashi Hanami, eds. (1997), p. 403.

[8] Ken Ellingwood, "California and the West; INS Intensifies Campaign to Lessen Migrant Death Toll. Border: Agents Will Receive Special Training in River Rescue and First Aid. A Growing Number of Immigrants Have Died in Back-Country Areas," Los Angeles Times, June 27, 2000.

[9] Tessie Borden, "INS: Border Policy Failed," The Arizona Republic, August 10, 2000.
[10] Duncan Campbell, "No Where to Run as Patrols Struggle to Stem the Flow of Illegal Immigrants from Mexico into the US, Some Locals are Hunting Down the 'Wetbacks,'" The Irish Times, October 21, 2000.

[11] Duncan Campbell, "No Where to Run as Patrols Struggle to Stem the Flow of Illegal Immigrants from Mexico into the US, Some Locals are Hunting Down the 'Wetbacks,'" The Irish Times.

EUROPE

Border Deaths/Smuggling

7. In 1985, the Schengen Agreement was originally signed by seven nations in Europe, and full implementation of the agreement began in July of 1995.[12] The Schengen Agreement was designed to "remove all controls at internal land, sea and airport frontiers."[13] In order to control internal security, "[e]xternal border controls have been stepped up in the Schengen countries who are hooked up to the Schengen Information System ... [which] is especially important for policing the movements of third country nationals entering the Union at the external borders of the Schengen countries."[14]

8. The Irish Times reported that "[t]he tightening of border controls at the periphery of the EU that followed the introduction of the Schengen Agreement between some member-states may have driven greater numbers of migrants into the arms of the human traffickers."[15]

9. On June 19, 2000, the tragic death of 58 Chinese migrants who were found in an unventilated reefer unit in the port of Dover after being smuggled from Belgium was not an isolated incident.[16] Jean-Phillippe Chauzy of Geneva-based International Organization of Migration believes that these deaths are an everyday occurrence.[17]

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[12] "Free Movement of Persons Within the European Union," http://europa.eu.int/en/agenda/schengen.html. The Schengen Agreement can be found at http://spjelkavik.priv.no/henning/ifi/schengen/body1.html. Members: Belgium, France, Germany, Luxembourg, the Netherlands, Portugal, Spain, Italy, Greece and Italy; by the end of 2000, Sweden, Finland and Denmark were to become full members and Iceland and Norway were to be given associate status.

[13] "Free Movement of Persons Within the European Union," http://europa.eu.int/en/agenda/schengen.html.

[14] "Free Movement of Persons Within the European Union," http://europa.eu.int/en/agenda/schengen.html.

[15] Denis Staunton, "Dover Trafficking Tragedy Not an Isolated Event. The Tragedy at Dover is a Startling Reminder that Trafficking in People is a Substantial, and Growing, Problem Across Europe," The Irish Times, June 24, 2000.

[16] Denis Staunton, "Dover Trafficking Tragedy Not an Isolated Event. The Tragedy at Dover is a Startling Reminder that Trafficking in People is a Substantial, and Growing, Problem Across Europe," The Irish Times, June 24, 2000; Sam Ignarski, "Quarter Points: It's Time to Address this Problem," Lloyd's List, September 11, 2000; John Lichfield, "Tougher Border Controls Spark Desperate Measures," The Independent (London).

[17] Denis Staunton, "Dover Trafficking Tragedy Not an Isolated Event. The Tragedy at Dover is a Startling Reminder that Trafficking in People is a Substantial, and Growing, Problem Across Europe," The Irish Times, June 24, 2000.

10. German authorities also concede that immigrants are regularly jammed into containers as was done in Dover.[18] Mr. Chaucy further stated, "[s]ince January of this year [2000], almost 160 people have been drowned, or their bodies have been found in the Straits of Gibraltar, people coming from the Maghreb or sub-Saharan Africa. The fact of the matter is nobody knows how many people die each year attempting to be smuggled across borders. It's easy to say at least one person dies every day of the year."[19]

11. The San Francisco Chronicle reported "Interpol ... estimates that 4 million human beings per year are being smuggled across international borders by transnational criminal syndicates. Chinese triads and Italian Mafia clans, and their counterparts from the former Soviet Union, the Balkans, Israel, Lebanon, Vietnam, Nigeria, Columbia and elsewhere."[20] The story also states, "[f]or a quarter of a century, the rich European nations have made legal immigration impossible. Yet these same nations have extremely low birthrates and a growing labor shortage that makes newcomers essential. To maintain its economic standards, according to a recent U.N. report, the European Union needs 1.6 million workers per year more than it produces through natural population growth."[21]

12. UNITED for Intercultural Action, a coalition for non-governmental organizations has created a list of deaths of migrants trying to get into Europe.[22] The compilation began in January of 1993 and documents migrant deaths through October 14, 2000. UNITED lists 2132 documented deaths.[23]

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[18] Denis Staunton, "Dover Trafficking Tragedy Not an Isolated Event. The Tragedy at Dover is a Startling Reminder that Trafficking in People is a Substantial, and Growing, Problem Across Europe," The Irish Times, June 24, 2000.

[19] Denis Staunton, "Dover Trafficking Tragedy Not an Isolated Event. The Tragedy at Dover is a Startling Reminder that Trafficking in People is a Substantial, and Growing, Problem Across Europe," The Irish Times, June 24, 2000. This story was written midway into 2000, so it would not be great speculation to presume many more died in the second half of the year.

[20] Frank Viviano, "New Mafias Go Global. High-tech trade in humans, drugs," The San Francisco Chronicle, January 7, 2001.

[21] Frank Viviano, "New Mafias Go Global. High-tech trade in humans, drugs," The San Francisco Chronicle, January 7, 2001.

[22] UNITED for Intercultural Action; European network against nationalism, racism, fascism and in support of migrants and refugees. http://www.united.non-profit.nl/docs/listofdeaths.xls.

[23] UNITED for Intercultural Action; European network against nationalism, racism, fascism and in support of migrants and refugees. http://www.united.non-profit.nl/docs/listofdeaths.xls. The list includes more than just migrants, it also includes asylum seekers and refugees.

SAUDI ARABIA

13. Twenty-five percent of the population is made up of foreign nationals, who while enjoying good salaries are "vulnerable to abuse by their employers and there are no trade unions to defend them."[24] "Some are not paid. Some are beaten. Some are raped."[25]

14. "Their rights as detainees [by the criminal justice system] are also violated and there are few legal safeguards to protect them."[26] Migrant workers can't practice their religion because they "face arrest, detention, ill-treatment and deportation."[27] Amnesty also found that "migrant workers may spend years in prison not knowing what charges are laid against them, sentences they are serving or even that they face execution."[28]

15. Saudi Arabia is reducing the number of foreign workers, in a process called "Saudiization."[29] Human Rights Watch reported that "[m]igrants have been long subjected to restriction such as surrender of passports to Saudi sponsors, limitations on freedom of movement, prohibitions on trade union organizing, and lack of access to legal representation in cases of arrest."[30] Migrant workers who remained after their length of stay were given a deadline to get new authorization or leave, and if they did not comply, they "faced fines of over U.S. $25,000, prison sentences of six months, and deportation."[31]

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[24] Amnesty International, Amnesty International: Saudi Arabia Campaign Website, http://www.amnesty.org/ailib/intcam/saudi/briefing/5.html.

[25] Amnesty International, "Saudi Arabia – Alone, afraid and abused," Amnesty International: Saudi Arabia Campaign Website, http://www.amnesty.org/ailib/intcam/saudi/issues/migrant.html.

[26] Amnesty International, Amnesty International: Saudi Arabia Campaign Website, http://www.amnesty.org/ailib/intcam/saudi/briefing/5.html.

[27] Amnesty International, Amnesty International: Saudi Arabia Campaign Website, http://www.amnesty.org/ailib/intcam/saudi/briefing/5.html.

[28] Amnesty International, Amnesty International: Saudi Arabia Campaign Website, http://www.amnesty.org/ailib/intcam/saudi/briefing/5.html.

[29] Human Rights Watch, Human Rights Watch World Report 2001: Saudi Arabia (2000), http://www.hrw.org/wr2k1/mideast/saudi.html.

[30] Human Rights Watch, Human Rights Watch World Report 2001: Saudi Arabia (2000), http://www.hrw.org/wr2k1/mideast/saudi.html.

[31] Human Rights Watch, Human Rights Watch World Report 2001: Saudi Arabia (2000), http://www.hrw.org/wr2k1/mideast/saudi.html.

THAILAND

16. Thailand continues to be a "hub of human trafficking within the region."[32] Thailand remains a hub because its trafficking enforcement laws are very weak.[33] Treatment of migrant workers is still unsatisfactory.[34] Human Rights Watch reported, "[d]uring a November 1999 crackdown on undocumented foreign labor, overcrowding in a number of immigration detention centers reached dangerous levels. Many migrants still did not have an effective opportunity to challenge charges of illegal entry."[35]

RECOMMENDATIONS

17. Human Rights Advocates recommends that the Commission:

18. Ask the Special Rapporteur to visit troubled border regions, such as the United States' side of its border with Mexico, to interview migrants and to develop solutions for preventing the many deaths that are occurring every day along these borders. The Special

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[32] Human Rights Watch, Human Rights Watch World Report 2001: Thailand (2000), http://www.hrw.org/wr2k1/asia/thailand.html.

[33] Human Rights Watch, Human Rights Watch World Report 2001: Thailand (2000), http://www.hrw.org/wr2k1/asia/thailand.html.

[34] Human Rights Watch, Human Rights Watch World Report 2001: Thailand (2000), http://www.hrw.org/wr2k1/asia/thailand.html.

[35] Human Rights Watch, Human Rights Watch World Report 2001: Thailand (2000), http://www.hrw.org/wr2k1/asia/thailand.html.

Rapporteur should also consider what other steps the United Nations could take to implement a more comprehensive approach to prevent the trafficking of persons.

19. Ask governments to take the following steps to avoid violations of migrant workers' rights and to report their results.

a) Cooperate with the Special Rapporteur by facilitating her visits. Reevaluate their practices so as to prevent the unnecessary deaths of individuals trying to cross national borders.

b) Establish guest worker programs, which would provide help to migrant workers to better their lives and better the economic condition of the countries that receive these workers.

c) If guest worker programs are implemented, governments must ensure that they include fundamental human rights safeguards to protect the lives and well being of migrant workers.

d) Governments should not arbitrarily detain migrant workers. If detained, they should be given the right to contact their consulates.

e) Governments should use more resources to stop human smuggling and the resulting injuries and deaths.